

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JUAN ISIDRO ITZEP, et al.

Plaintiffs,

v.

TARGET CORPORATION, et al.

Defendants.

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CIVIL ACTION NO. SA-06-CA-0568-XR

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGEMENT

TO THE HONORABLE JUDGE OF THE COURT:

The Plaintiffs' file this Motion for Partial Summary Judgment pursuant to Rule 56 Fed.R.Civ.P. against defendant Target Corporation and against defendants Jim's Maintenance & Sons, Inc. dba Jim's Maintenance and Jim's Commercial Cleaning Services. (Jim's Maintenance & Sons, Inc. and Jim's Commercial Cleaning Services are hereinafter referred to as "Jim's Maintenance".)¹ In support of this motion, the Plaintiffs would show the Court as follows:

INTRODUCTION

1. The Plaintiffs are unskilled janitorial workers who held regular nightly jobs cleaning Target stores in the Austin and San Antonio areas. They have brought this claim under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA), seeking to recover the unpaid minimum wage and overtime pay that the defendants failed to pay them and to recover their entire last paycheck which was withheld from most of them by Target and Jim's Maintenance.

¹ Defendant James Funderburgh, the CEO and owner of Jim's Maintenance, was named as a defendant in the original complaint, but has since filed a petition in bankruptcy automatically staying all proceedings against him in this court. The undisputed evidence indicates that Jim's Maintenance & Sons and Jim's Commercial Cleaning Services are insolvent as well, but they have not filed any bankruptcy petition.

2. Plaintiffs request that this court enter partial summary judgment against Defendant Target Corporation, ruling that the Plaintiff janitorial workers were jointly employed by Target within the meaning of the FLSA, so that Target would be jointly and severally liable for any unpaid wages that are determined in this action to be due to the Plaintiffs under the FLSA for the work they performed for Target and Jim's Maintenance.

3. Plaintiffs further request that this court enter partial summary judgment against Jim's Maintenance, ruling that the Plaintiffs were also jointly employed by Jim's Maintenance within the meaning of the FLSA, so that Jim's Maintenance would be jointly and severally liable for any unpaid wages that are determined in this action to be due to the Plaintiffs under the FLSA and should Jim's Maintenance ever possess any assets from which such wages could be recovered.

BASIS FOR SUMMARY JUDGMENT

4. This motion is supported by the Plaintiffs' Appendix of Summary Judgment Facts attached hereto, including the exhibits, testimony, affidavits and evidence contained in that Appendix, as well as by the Brief in Support of Plaintiffs' Motion for Partial Summary Judgment.

5. The pleadings and the evidence referenced in the Plaintiffs' Summary Judgment Fact Index show that based on the basis of the undisputed facts in this case, the Plaintiffs are entitled to judgment as a matter of law that Target and Jim's Maintenance jointly employed the Plaintiffs.

6. Pursuant to Rule 56(d) Plaintiffs request that the court, after examining the pleading and evidence, ascertain what material facts have been established without substantial

controversy and what material facts are actually and in good faith controverted. Plaintiffs request that the court thereafter enter an order specifying the facts that that appear to be without substantial controversy and directing such further proceedings in the action as are just.

WHEREFORE, for the reasons set forth above, Plaintiffs respectfully request that they be granted partial summary judgment holding that Defendants Target Corporation and Jim's Maintenance jointly employed the Plaintiffs and are jointly and severally liable for any violations of the Plaintiffs rights under the Fair Labor Standards Act that are established in this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 17th day of July, 2007, I electronically transmitted the this Motion together with the Appendix and Brief in support of the Motion to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants below:

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